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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 952

MYRTLE MAY DUNN, ALVIN D. DUNN, and CITIZENS NATIONAL TRUST AND SAVINGS BANK OF LOS ANGELES, Executors of the Estate of A. M. DUNN, Deceased; and MYRTLE M. DUNN, *Appellants,*

v.

COUNTY OF LOS ANGELES, a Body Corporate and Politic, and THE TEXAS COMPANY, a Corporation, *Appellees.*

MOTION TO DISMISS
and
SUPPORTING BRIEF, FILED BY APPELLEE, THE TEXAS COMPANY

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May 1958

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v.

COUNTY OF LOS ANGELES, a Body Corporate and Politic, and THE TEXAS COMPANY, a Corporation, *Appellees.*

MOTION TO DISMISS

The Texas Company, an appellee herein, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves the Court to enter an order dismissing the appeal of appellants herein on the grounds that:

1. The appeal does not present a substantial federal question.

2. The lower court's judgment rests on adequate non federal bases.

Said motion will be made upon the record in the above-entitled cause, together with the brief included herewith.

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BRIEF IN SUPPORT OF MOTION TO DISMISS

STATEMENT OF THE CASE

This action was commenced by the filing of a complaint in the Superior Court of the State of California, in and for the County of Los Angeles, on August 19, 1955. The complaint sought (1) declaratory relief, (2) to quiet title, (3) damages for inverse condemnation, and (4) an accounting. The demurrer of appellee, County of Los Angeles, was sustained without leave to amend as to the second, third and fourth causes of action. (R. 84-85) After answers by the County of Los Angeles and The Texas Company, the motion of the County for judgment on the pleadings and for a summary judgment and the motion of The Texas Company for judgment on the pleadings, were granted. (R. 84-85) The judgment of the Superior Court was affirmed by the District Court of Appeal, State of California, Second Appellate District, 155 A.C.A. 885, 318 P. 2d 795. Petitions for rehearing by the District Court of Appeal and for a hearing in the Supreme Court of the State of California were denied.

The allegations of the complaint are substantially set forth in the opinion of the District Court of Appeal, which has been attached as an appendix to Appellants' Statement as to Jurisdiction.

The series of events alleged to have occurred during the past twenty-one years may be summarized as follows:

About 1937 the County of Los Angeles, acting through its Board of Supervisors, determined to establish a prison farm and, in selecting the location, employed appraisers to appraise appellants' 1,400 acre

property near Newhall, California. Negotiations for appellants' property included discussions of both condemnation and the retention of mineral rights by the appellants. However, no condemnation action was instituted and no agreement for retention of mineral rights was reached. At the conclusion of negotiations, the appellants entered into a five year lease and option agreement with the County of Los Angeles, which expressly provided for purchase of the property by the County for the sum of $148,000 at any time during the five year term of the lease. (R. 5-8) Thereafter, the County elected to exercise its option and the appellants, on July 7, 1939, executed a grant deed which was without, and was then known by appellants to be without, reservation of mineral rights but which included fifteen other express reservations. (R. 70-75) The County accepted the deed by order adopted July 11, 1939, entered in Minute Book 252 of the Minutes of the Board of Supervisors, and paid appellants the purchase price (R. 69); and the deed was recorded July 20, 1939. (R. 76) The County established and operated the property thereafter and to date as Wayside Honor Rancho, a prison farm.

Some eleven years after the appellants sold the property to the County, namely, in April 1950, the County issued an oil lease authorizing The Texas Company as lessee to explore, drill for, and produce oil from the property. (R. 39) Within a few weeks thereafter, namely, on June 7, 1950, The Texas Company obtained an oil lease from the Dumns, appellants herein, covering the Dumns' mineral rights in a 150 foot strip of land which was specifically excepted from the 1939 deed to the County. (R. 37-47) The Dumns' lease to The Texas Company expressly noted the existence of the lease from the County and relied upon

that lease and continuing operations under it in establishing the royalties to be paid to the Dunns in the event oil was discovered. (R. 39)

After oil leases were issued by the County and the Dunns, respectively, to The Texas Company in April and June 1950, The Texas Company began drilling and was successful in finding and producing oil. Royalties have been paid regularly to the County and to the Dunns.

I.

NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED

Appellants' Statement as to Jurisdiction is based almost entirely upon allegations as to the County's authority to acquire land by eminent domain. ~~(R. 8-9)~~ However, the complaint shows on its face that the County acquired the property by purchase, not by condemnation. (R. 8) What might have been acquired by exercise of the right of eminent domain is entirely speculative.

> "This Court is without power to give advisory opinions. It will not decide constitutional issues which are hypothetical, or in advance of the necessity for deciding them, or without reference to the manner in which the statute, whose constitutional validity is drawn in question, is to be applied. *Alabama State Federation of Labor* v. *McAdory*, No. 588, October Term, 1944, decided June 11, 1945, [325 U.S. 450, 459-463, 89 L.ed. 1725, 1733-1735] and cases cited." *Asbury Hospital* v. *Cass County* (1945) 326 U.S. 207, 213; 90 L.ed. 6, 13.

The 14th Amendment to the United States Constitution was never mentioned until after appellants' opening brief before the District Court of Appeals had been filed. Earlier oblique references to "just compensa-

tion" and "public use" were with respect to the theoretical powers of a governmental agency to take property in an eminent domain proceeding, an inquiry not applicable to the facts alleged by the complaint.

The California courts were called upon to decide the validity of the conveyance to appellee, Los Angeles County.

Appellants asserted in the California courts that appellee, County of Los Angeles, only took an easement under the deed.[1] The question of the interest conveyed by appellants to appellee, County of Los Angeles, is solely a matter of state law and does not raise a federal question. *Saydam* v. *Williamson* (1861) 65 U.S. 427, 16 L.ed. 742; *United States* v. *Fox* (1877) 94 U.S. 315, 320, 24 L.ed. 192; *United States* v. *Crosby* (1812) 11 U.S. 115, 116, 3 L.ed. 287.

Similarly, the right of the County of Los Angeles to acquire and hold real property by fee simple or otherwise is derived from and dependent upon the State of California.[2] and does not raise a federal ques-

[1] Under California law, as the lower court correctly decided, appellants' grant deed to the County of Los Angeles was a grant of fee simple title. Section 1105 of the Code of Civil Procedure, California; *Taylor* v. *Avila* (1917) 175 Cal. 203, 165 P. 533. A fee title to property, under California law, includes oil rights *City of Long Beach* v. *Marshall* (1938) 11 C. 2d 609, 82 P. 2d 362; *Brown* v. *Copp* (1951) 105 C.A. 2d 1, 232 P. 2d 868. While not relevant to the consideration of the instant motion, appellants' contention that a California governmental or public agency can take no greater title by purchase than it can by condemnation is similarly without merit under California law. *City of Oakland* v. *Schenck* (1925) 197 Cal. 456, 466; 241 P. 545, 549; *Highland Realty Co.* v. *San Rafael* (1956) 46 Cal. 2d 669, 297 P. 2d 15.

[2] Under California law a county or municipality is authorized to acquire fee simple title to realty. *Cooper* v. *Selna* (1920) 48 Cal. App. 228; *City of Santa Barbara* v. *Davis* (1904) 142 Cal. 669, 672, 76 P. 495.

tion. *Comrs. of Laramie Co.* v. *Comrs. of Albany Co.* (1876) 92 U.S. 307, 23 L.ed. 552.

Appellants further asserted before the California courts that they had been coerced into executing the lease and option to purchase by threats of the County's agent to institute "costly condemnation proceedings".[3] Questions of fraud or duress surrounding the conveyance of real property do not raise a federal question. *Cramer* v. *Wilson* (1904) 195 U.S. 408, 416, 49 L.ed. 256. Furthermore, threat of civil suit is not duress, even though there may be no legal right to enforce the claim. *Board of Trustees of National Training School* v. *O. D. Wilson Co., Inc.* (C.A. D.C. 1953) 133 F. 2d 399, 77 U.S. App. D.C. 127; *Automatic Radio Mfg. Co.* v. *Hazeltine Research* (1 Cir. 1949) 176 F. 2d 799, aff'd. (1950) 339 U.S. 827, 94 L.ed. 1312.

It thus follows that no substantial federal question is presented to this Court.

II.

THE LOWER COURT JUDGMENT RESTS ON ADEQUATE NON-FEDERAL BASES

The decision of the District Court of Appeal (1) affirmed the Superior Court's action sustaining the County's demurrer to the second, third and fourth causes of action on the grounds that they were barred by applicable statutes of limitation and (2) held that the request for declaratory judgment was similarly barred.

> "The complaint alleges that the Dumns executed the deed in July, 1939, and that oil was discov-

[3] The District Court of Appeal properly held that there had been no fraud or coercion. (Appendix, Jurisdictional Statement, pp. xviii, xxiv.)

ered by The Texas Company about August 22, 1950. The action was commenced August 19, 1955, which was more than 16 years after the Dunns executed the deed, and about five years after the discovery of oil. If the action be regarded as one to recover oil rights (an interest in real property) it is barred by Section 319 of the Code of Civil Procedure (five years); if it be regarded as one to recover for trespass upon or injury to real property it is barred by said section 338, subdivision 2, (three years); if it is based on fraud or mistake it is barred by said section 338, subdivision 4, (three years). '(T)he nature of the right sued upon and not the form of action nor the relief demanded determines the applicability of the statute of limitations.' (*Maguire* v. *Hibernia S. & L. Soc.*, 23 Cal. 2d 719, 733 (146 P. 2d 673, 151 A.L.R. 1062).) '(T)he period of limitations applicable to ordinary actions . . . should be applied in like manner to actions for declaratory relief.' (*Maguire* v. *Hibernia S. & L. Soc.*, supra, 734.)" Appendix to Jurisdictional Statement, pp. xx-xxi.

* * * * * * *

"In *Wade* v. *Busby*, 66 Cal. App. 2d 709 (152 P. 2d 754), it was said (p. 702) that an action to set aside a deed upon the ground of undue influence was governed by the four-year period of limitation prescribed in Section 343 of the Code of Civil Procedure. In the present case the claim regarding coercion was barred by said section." Appendix to Jurisdictional Statement, p. xxiv.

A mere discussion by the District Court as to the validity of California's Industrial Farm Act, which

[1] California's statutes of limitations apply to both legal and equitable actions. *Hartley Pen Co.* v. *Lindy Pen Co.* (S.D. Cal. 1954) 16 F.R.D. 141, 158, citing among others, *Meigs* v. *Pinkham* (1910) 159 Cal. 104, 112 P. 838, 886.

appellants contend is violative of the 14th Amendment, is not sufficient to present a substantial federal question. *Black* v. *Cutter Laboratories* (1956) 351 U.S. 292, 298, 100 L.ed. 1188, 1196. Where there is adequate non-federal ground to support the judgment of the state court, there can be no review by this Court. *Herb* v. *Pitcairn* (1945) 324 U.S. 117, 125, 89 L.ed. 789, 794; *Wood* v. *Chesborough* (1913) 228 U.S. 672, 677, 57 L.ed. 1019, 1020.

> "And certainly the application of laches and the statute of limitations does not present a Federal question." *Wood* v. *Chesborough, supra,* at 677.

Appellants have not claimed, nor can they in good conscience claim that the above relied upon statutes of limitations were unreasonable time-wise.

Appellee, The Texas Company, in its motion for judgment on the pleadings raised a defense of estoppel based on the oil lease issued to The Texas Company by the appellants on June 7, 1950.[5] That lease recited the fact of The Texas Company's lease from Los Angeles County and, indeed, relied upon possible production under The Texas Company's lease from Los Angeles County to establish royalty payments due to the Dunns under their lease. The District Court of Appeals properly held that the appellants were estopped to claim as against The Texas Company that the deed to the County did not convey oil rights. (Appendix to Jurisdictional Statement, p. xxv.) Section 1962 of the Code of Civil Procedure, California establishes a conclusive pre-

[5] A copy of the lease was attached to The Texas Company's answer and was admitted as to due execution and genuineness pursuant to section 448 of the Code of Civil Procedure, California

sumption of estoppel. A decision by a state court based upon estoppel does not present a reviewable federal question. *Hale* v. *Lewis* (1901) 181 U.S. 473, 479-480, 45 L.ed. 959, 962.

CONCLUSION

It appears from the record not only that the federal question sought to be raised is hypothetical and non-existent, but also that the case was decided below on the separate, independent and non-federal bases of (1) the statute of limitations, (2) State-granted rights to and for the County to acquire a fee simple in realty by deed, and (3) estoppel. There is no reason for the Court to consider or pass upon the appeal. It should be dismissed.

Respectfully submitted,

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May 1958

Certificate of Service

I, John J. Wilson, one of the attorneys of record for The Texas Company, an appellee herein, and a member of the bar of the Supreme Court of the United States, do hereby certify that I have served the foregoing Motion to Dismiss and Supporting Brief, Filed by Appellee, The Texas Company on counsel of record by mailing a copy thereof, proper air mail postage prepaid, to each of the following:

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Dated at Washington, D. C., this 22nd day of May, 1958.

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